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An unending variety of topics

Sunday, October 16, 2005

Some common and natural law rights of parenthood

The rights of parents to control the education and upbringing of their children may be the most ancient and fundamental natural rights of all. From modern societies to hunter-gatherer and neolithic cultures, and even back our primate ancestors, parents and, secondarily, near relatives controlled their children. In every great civilization, parents and near relatives determined the upbringing and education of their children, with some pathological exceptions such as a ancient Sparta, Nazi Germany, and communist countries. There was little need to do anything but take this right for granted until the rise of compulsory government education and totalitarian ideologies in the late 19th century. In the 1920s, the Supreme Court reasserted parental rights as a common law rights in the United States in two landmark cases, *Meyer v. Nebraska* and *Pierce v. Society of Sisters*.

In *Meyer* the Court classified common law rights as falling under the substantive liberties of the Due Process Clause:

> While this court has not attempted to define with exactness the liberty thus guaranteed, the term has received much consideration and some of the included things have been definitely stated. Without doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men...Corresponding to the right of control, it is the natural duty of the parent to give his children education suitable to their station in life...

Pierce reaffirmed the the "liberty of parents and guardians to direct the upbringing and education of children under their control."

Most recently, "parents' fundamental right to make decisions concerning the care, custody, and control of their children" was reasserted against a broad forced visitation statute in Troxel v. Granville (2000).

Posted by Nick Szabo at 8:32 AM

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Nick Szabo

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